



PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Bruce E. Kramer et al.

U.S. Application No.: 10/033,775

Confirmation No.: 8566

Group Art Unit: 3764

Filed: January 3, 2002

Examiner: Stephen R. Crow

For: Treadmill

APPEAL BRIEF

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Further to the Notice of Panel Decision mailed November 19, 2010, Appellants
submit this appeal brief for the Board's consideration.

REAL PARTY IN INTEREST

The real parties in interest are the inventors, Bruce E. Kramer and Joy E. Belin.

RELATED APPEALS AND INTERFERENCES

Appellants do not know of any prior or pending appeals, interferences or judicial proceedings which may be related to, directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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STATUS OF CLAIMS

Claims 1, 5-7, 10-13, 17-19, and 22-26 are rejected and are being appealed.

Claims 2-4, 8-9, 14-16 and 20-21 are cancelled.

STATUS OF AMENDMENTS

No amendments were filed after the Final Office Action of May 7, 2010.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention, which is summarized in the following paragraphs, is an important innovation because of the growing obesity epidemic in the U.S. This epidemic can be addressed in part by enabling people to exercise more. In this regard, people often enjoy walking with a partner for exercise. However, people who enjoy walking with a partner have problems when they wish to walk together at night or when the weather is poor, such as when it is raining or snowing or simply too cold or too hot. In such situations, these people face danger or discomfort or both when they walk outdoors. To avoid these problems, people can walk indoors on a treadmill. However, current treadmills do not provide a satisfactory for people who wish to walk with a partner, because typical treadmills can only accommodate a single treadmill user. If a person wishes to walk with a partner, two separate treadmills typically would be needed, but this solution is expensive and still has problems, such as making it difficult for the two treadmill users to hold hands while walking. The present invention solves these problems by providing a treadmill device which permits two treadmill users to simultaneously exercise side-by-side, even while holding hands, as summarized below.

Independent claim 1 is directed to a treadmill comprising a base 22, a pair of parallel, spaced rollers 24 and 26 rotatably disposed in the base, and an endless belt 28 extending around both rollers, wherein the belt has a width which is large enough to accommodate two treadmill users side-by-side, wherein the two treadmill users are two adult people, wherein the treadmill further comprises a control panel 36 for a treadmill

user on the treadmill. See, e.g., page 4, line 14 to page 5, line 8, page 8, line 21 to page 9, line 17, and Fig. 1 in the present application.

Independent claim 7 is directed to a treadmill comprising a base 22, two pairs of parallel, spaced rollers 241 and 261, and 242 and 262, rotatably disposed in the base, and two endless belts 281 and 282, wherein one belt 281 extends around both rollers in one pair of rollers 241 and 261 and the other belt 282 extends around both rollers in the other pair of rollers 242 and 262, wherein each belt has a width which is large enough to accommodate one treadmill user, and wherein the two belts are positioned to accommodate two treadmill users side-by-side, wherein each belt has a width which is large enough to accommodate an adult person. See, e.g., page 3, lines 10-15, page 5, lines 13-18, page 6, lines 9-10, the paragraph inserted before the last paragraph on page 11 (see the Amendment filed September 26, 2005), and Fig. 2 (see the Amendment filed September 26, 2005).¹

Independent claim 13 is directed to a method for two treadmill users to exercise side-by-side on a single treadmill, comprising

providing a treadmill comprising a base, a pair of parallel, spaced rollers rotatably disposed in the base, and an endless belt extending around both rollers, wherein the belt has a width which is large enough to accommodate two treadmill users side-by-side, wherein the two treadmill users are two adult people, and

¹ While Appellants believe that the amendments filed September 26, 2005 are adequately supported by the disclosure in the specification as originally filed (e.g., the disclosure at page 5, lines 13-18), in the event that the Examiner alleges them to be new matter Appellants simply refer the Board to, e.g., the disclosure at page 3, lines 10-15, and page 5, lines 13-18 in connection with independent claim 7.

moving the belt to exercise two treadmill users positioned side-by-side on the belt. See, e.g., page 3, lines 16-21, page 5, lines 6-8, and page 8, lines 8-12.

Independent claim 19 is directed to a method for two treadmill users to exercise side-by-side on a single treadmill, comprising

providing a treadmill comprising a base, two pairs of parallel, spaced rollers rotatably disposed in the base, and two endless belts, wherein one belt extends around both rollers in one pair of rollers and the other belt extends around both rollers in the other pair of rollers, wherein each belt has a width which is large enough to accommodate one treadmill user, and wherein the two belts are positioned to accommodate two treadmill users side-by-side, wherein each belt has a width which is large enough to accommodate an adult person, and

moving the belts to exercise two treadmill users positioned side-by-side on the belts. See, e.g., page 3, line 22 to page 4, line 6, page 6, lines 9-10, and page 8, lines 13-20.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 6-7, 10-12, 18-19, and 22-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Moon et al.

Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kelsey et al.

Claims 7, 10, 11, 19, 22, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Piaget et al.

Claims 1, 5, 13, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen.

Claims 1, 5, 13, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelsey et al.

Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Nichols.

Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard (page 6 of Final Office Action).

Claims 12 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Piaget et al in view of Gerard.

Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen and further in view of Gerard or Nichols.

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Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard (page 7 of Final Office Action).

Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelsey further in view of Gerard or Nichols.

ARGUMENT

Rejection of Claims 6-7, 10-12, 18-19, and 22-26 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement

On page 2 of the Office Action of May 7, 2010, claims 6-7, 10-12, 18-19, and 22-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The Examiner's Position

The Examiner's position is basically that the pair of endless belts, the separate belt inclinations, the independently driven belts, the separate pivoting handlebar, and other structure claimed are not described and shown, as originally filed, by the disclosure.

Appellants' Response

In response, Appellants submit that the present claims satisfy the requirements of 35 U.S.C. 112, first paragraph, and request that this rejection be reversed in view of the following remarks.

Claims 7, 10-12, 19 and 22-26

In response, Appellants submit initially that contrary to the Examiner's position, the pair of endless belts, the separate belt inclinations, the independently driven belts, the separate pivoting handlebar, and other structure recited in the claims are described and shown in the specification at, e.g., in the description from page 5, line 13 to page 6, line 16 and in the description in the last paragraph on page 7 in the application. Further, Appellants submit that this disclosure is sufficient, particularly when the knowledge in the art is considered, even without considering the drawings in the present case.

In this regard, with respect to the pair of endless belts, the separate belt inclinations, the independently driven belts, and other structure, Appellants note that in the Office Action of January 10, 2006, the Examiner himself cited references which teach dual-type treadmills (see paragraph 3 on page 5 of the January 10, 2006 Office Action, as well as the references listed on the PTO-892 form attached to that Office Action). For instance, the Examiner's attention is directed to Fig. 2 in U.S. Patent 5,607,376 and Fig. 1 in U.S. Patent 4,204,673 together with the associated disclosure in each of those patents as evidence of the knowledge in the art with respect to dual-type treadmills. As set forth in MPEP 2164.05, an Applicant may cite references to show what one skilled in the art knew at the time of filing the application. Further, as set forth in MPEP 2164.05(a), the specification need not disclose what is well-known to those skilled in the art and preferably omits that which is well-known to those skilled and already available to the public. *In re Buchner*, 929 F.2d 660, 661 18 USPQ2d 1331, 1332 (Fed. Cir. 1991), *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986), *cert. denied*, 480 U.S. 947 (1987); and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1463, 221 USPQ 481, 489 (Fed. Cir. 1984).

Further, with respect to the separate pivoting handlebar, Appellants submit that element 54 in present Fig. 2 (relevant to claims 12 and 24, which are supported by the disclosure at page 7, lines 4-19) is supported by, e.g., the disclosure at page 7, lines 13-19 in the original specification. From this description, Appellants submit that one skilled in the art would readily envision an element 54 that is linear and extends orthogonally away from a middle portion of the handlebar 46, and can be pivoted. While the Examiner has

indicated previously that handle 54 is not integral with the handlebar 46 and that handle 54 is not the "middle portion" but rather handle 46 possesses a middle portion which cannot be seen due to the display and handle 54 is a separate handlebar, Appellants submit that one skilled in the art would readily envision middle portion 54 based on the description in the last paragraph on page 7 in the application and would understand that middle portion 54 is connected to the middle part of handle bar 46, as discussed at page 7, lines 13-14. In this regard, Appellants submit that the Examiner is confusing "middle portion" with "middle part" as those terms are used in the specification, e.g., in the last paragraph on page 7.

In regard to Fig. 2, Appellants submit that the answers to the issues raised in the past by the Examiner, namely, whether the belts are equal sized and how the extra pair of rollers is supported on the frame, would be readily understood by one skilled in the art in view of the aforementioned disclosure at page 5, line 13 to page 6, line 16, and the knowledge in the art (e.g., Fig. 2 in U.S. Patent 5,607,376 and Fig. 1 in U.S. Patent 4,204,673 together with the associated disclosure in each of those patents), as discussed above.

With respect to the Examiner's indication in the past that the adage "a picture is worth a thousand words" is applicable here and that in most cases a drawing is more detailed than the written disclosure, Appellants again submit that the figures in the present application are supported by, e.g., the written disclosure on pages 5-7 as discussed above, particularly when that disclosure is considered in view of the skill in the art, as discussed above.

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As to the Examiner's indication in the past that the drawing changes added new matter, Appellants respectfully disagree and submit that the drawing changes are supported by the specification as originally filed, including the disclosure at page 5, line 13 to page 6, line 16 and in the description in the last paragraph on page 7 as discussed above. With respect to the Examiner's previous indication that the "readily envisioned by one skilled in the art" argument is subjective, Appellants disagree and submit that one skilled in the art considering the disclosure in the present specification together with the knowledge in the art (such as U.S. Patents 5,607,376 and 4,204,673 discussed above) would be able to readily envision the claimed invention. Regarding the Examiner's previous question as to how the new subject matter is readily envisioned by the prior art if the prior art doesn't teach the claimed invention, Appellants submit that the subject matter at issue is readily envisioned by the disclosure in the present specification taken together with the knowledge in the art. As to the Examiner's previous indication that it still remains unclear how one would realize the linear, horizontal element of the drawing in addition to how it would be attached to the handle bar 46 from a reading of the specification, Appellants submit that the description in the last paragraph on page 7 in the specification (including the disclosure that the middle portion can extend back from a middle part of the front portion and that, when not desired, the middle portion either can be pivoted so that it hangs down from the front portion or can be removed) is sufficient to describe the linear, horizontal element of the proposed drawing in addition to how it would be attached to the handle bar 46.

Claims 6 and 18

Appellants submit that claims 6 and 18 are adequately described in a manner similar to that discussed above with respect to claims 12 and 24, except that the issue of the pair of endless belts, the separate belt inclinations, the independently driven belts, and other structure recited in independent claims 7 and 19 does not arise since claims 6 and 18 depend from claims 1 and 13, respectively (in contrast to claims 12 and 24, which depend from claims 7 and 19, respectively). See, e.g., page 7, lines 4-19 for disclosure supporting claims 6 and 18.

In addition, Appellants submit that element 54 in present Fig. 1 is supported by, e.g., the disclosure at page 7, lines 13-19 in the original specification. From this description, Appellants submit that one skilled in the art would readily envision an element 54 that is linear and extends orthogonally away from a middle portion of the handlebar 46, and can be pivoted. While the Examiner has indicated previously that handle 54 is not integral with the handlebar 46 and that handle 54 is not the "middle portion" but rather handle 46 possesses a middle portion which cannot be seen due to the display and handle 54 is a separate handlebar, Appellants submit that one skilled in the art would readily envision middle portion 54 based on the description in the last paragraph on page 7 in the application and would understand that middle portion 54 is connected to the middle part of handle bar 46, as discussed at page 7, lines 13-14. In this regard, Appellants submit that the Examiner is confusing "middle portion" with "middle part" as those terms are used in the specification, e.g., in the last paragraph on page 7.

Further, Appellants submit that the description in the last paragraph on page 7 in the specification (including the disclosure that the middle portion can extend back from a middle part of the front portion and that, when not desired, the middle portion either can be pivoted so that it hangs down from the front portion or can be removed) is sufficient to describe the linear, horizontal element of the drawing in addition to how it would be attached to the handle bar 46.

Thus, Appellants submit that claims 6-7, 10-12, 18-19, and 22-26 satisfy the requirements of 35 U.S.C. 112, first paragraph, and reversal of this rejection is respectfully requested.

Rejection of Claims 1 and 13 under 35 U.S.C. 102(b) as being anticipated by Moon et al.

On page 3 of the Office Action of May 7, 2010, claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Moon et al.

In response, Appellants note initially that claims 1 and 13 recite a treadmill having an endless belt which is wide enough to accommodate two treadmill users side-by-side, wherein the two treadmill users are two adult people.

Appellants submit that Moon does not teach or suggest such a wide belt, and Appellants note that the Examiner has still not identified the specific disclosure in Moon which he considers anticipatory, despite the specific request made page 12 in the Amendment filed February 6, 2008.

In this regard, Appellants note that MPEP 2125 states that when a reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt*,

Inc. v. Avia Group Int'l, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) (The disclosure gave no indication that the drawings were drawn to scale. "[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.").

With respect to the Examiner's previous indication that the language "adult people" doesn't recite specific dimensions and that adult humans come in various sizes, such as dwarfs who are abnormally small, Appellants submit that such an interpretation is unreasonable and is not the interpretation that one skilled in the art would give to the terminology at issue. In this regard, Appellants note that the recitation of two adult people was originally recited in claim 2, which depended on claim 1 and recited that the belt has a width which is large enough to accommodate two adult people side-by-side. Claim 1 recited that the belt has a width which is large enough to accommodate two treadmill users side-by-side. For claim 2 to be a proper dependent claim and further limit claim 1, the recitation in claim 2 of two adult people side-by-side would need to result in a belt which is wider than the minimum width belt which could accommodate two treadmill users side-by-side. Thus, Appellants submit that the Examiner has not fairly interpreted the recitation of adult people in claim 1. A similar argument applies to claim 13.

With respect to the Examiner's indication in the present Office Action that the claim limitation "side-by-side" can include: one user ahead of the other user; the two users facing orthogonal to the belt's direction of travel; two users facing forward and fitted between the handrails when the belt is stationary, Appellants disagree with the

Examiner to the extent they understand his position. The recitation "side-by-side" means that the two users are next to each other (not one in front of the other, as would be the case with one user ahead of the other as proposed by the Examiner). This can be readily understood from, e.g., the Background of the Invention and the Summary of the Invention in the present application. Moon does not teach or suggest a treadmill which can accommodate two treadmill users who are adult people "side-by-side" as properly interpreted.

Separate Patentability of Method Claim 13

With respect to method claim 13 in particular, Moon does not teach or suggest moving the belt to exercise two treadmill users, so claim 13 is neither anticipated by nor obvious over Moon for this additional reason.

In view of the above, Appellants submit that the present invention is not anticipated by (or obvious over) Moon et al. Accordingly, reversal of this rejection is respectfully requested.

Rejection of Claims 1 and 13 under 35 U.S.C. 102(b) as being anticipated by Kelsey et al.

On page 3 of the Office Action of May 7, 2010, claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelsey et al.

In response, Appellants again note that claims 1 and 13 recite a treadmill having an endless belt which is wide enough to accommodate two treadmill users side-by-side, wherein the two treadmill users are two adult people.

Appellants submit that Kelsey et al does not teach or suggest such a wide belt, and Appellants note that the Examiner has still not identified the specific disclosure in Kelsey

et al which he considers anticipatory, despite the specific request made page 12 in the Amendment filed February 6, 2008.

In this regard, Appellants note that MPEP 2125 states that when a reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) (The disclosure gave no indication that the drawings were drawn to scale. "[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.").

With respect to the Examiner's previous indication that the language "adult people" doesn't recite specific dimensions and that adult humans come in various sizes, such as dwarfs who are abnormally small, Appellants submit that such an interpretation is unreasonable and is not the interpretation that one skilled in the art would give to the terminology at issue. In this regard, Appellants note that the recitation of two adult people was originally recited in claim 2, which depended on claim 1 and recited that the belt has a width which is large enough to accommodate two adult people side-by-side. Claim 1 recited that the belt has a width which is large enough to accommodate two treadmill users side-by-side. For claim 2 to be a proper dependent claim and further limit claim 1, the recitation in claim 2 of two adult people side-by-side would need to result in a belt which is wider than the minimum width belt which could accommodate two treadmill users side-by-side. Thus, Appellants submit that the Examiner has not fairly

interpreted the recitation of adult people in claim 1. A similar argument applies to claim 13.

With respect to the Examiner's indication in the present Office Action that the claim limitation "side-by-side" can include: one user ahead of the other user; the two users facing orthogonal to the belt's direction of travel; two users facing forward and fitted between the handrails when the belt is stationary, Appellants disagree with the Examiner to the extent they understand his position. The recitation "side-by-side" means that the two users are next to each other (not one in front of the other, as would be the case with one user ahead of the other as proposed by the Examiner). This can be readily understood from, e.g., the Background of the Invention and the Summary of the Invention in the present application. Kelsey does not teach or suggest a treadmill which can accommodate two treadmill users who are adult people "side-by-side" as properly interpreted.

Separate Patentability of Method Claim 13

With respect to method claim 13 in particular, Kelsey does not teach or suggest moving the belt to exercise two treadmill users, so claim 13 is neither anticipated by nor obvious over Kelsey for this additional reason.

In view of the above, Appellants submit that the present invention is not anticipated by (or obvious over) Kelsey et al. Accordingly, reversal of this rejection is respectfully requested.

Rejection of Claims 7, 10, 11, 19, 22, and 23 under 35 U.S.C. 102(b) as being anticipated by Piaget et al.

On page 3 of the Office Action of May 7, 2010, claims 7, 10, 11, 19, 22, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Piaget et al.

In response, Appellants note initially that the Examiner asserts that each belt in Piaget has a width which is large enough to accommodate one treadmill user, and that the two belts in Piaget are positioned to accommodate two treadmill users side-by-side, wherein each belt has a width which is large enough to accommodate an adult person.

In response, Appellants submit that Piaget discloses that a user stands with one leg positioned on each of the side-by-side treadmills (see the top of col. 4). Therefore, Piaget clearly is directed to one treadmill user who places one foot on each belt and thus uses both belts himself or herself.

Moreover, if each belt in Piaget were to have a width large enough to accommodate an adult person using the treadmill, the single user actually intended by Piaget would have difficulty placing one foot on each belt and also holding the handlebars 26, so this is an additional reason why Piaget does not teach or suggest the present invention.

Separate Patentability of Method Claims 19, 22, and 23

With respect to method claims 19, 22, and 23 in particular, Piaget does not teach or suggest moving the belt to exercise two treadmill users, so those claims are neither anticipated by nor obvious over Piaget for this additional reason.

In view of the above, Appellants submit that the present invention is not anticipated by (or obvious over) Piaget et al. Accordingly, reversal of this rejection is respectfully requested.

Rejection of Claims 1, 5, 13, and 17 under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen

On page 4 of the Office Action of May 7, 2010, claims 1, 5, 13, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen.

The Examiner's Position

The Examiner indicates that Moon et al teaches all of Appellants' claimed invention except for the specific widths claimed. The Examiner's position is basically that in view of the well recognized use of treadmills for training horses as shown in Derksen, it would have been obvious to enlarge the Moon et al treadmill to any desirable width for accommodating any desired animal for exercise purposes. The Examiner indicates that this is a matter of design choice and is a matter of size or degree, which would have been an obvious modification to an artisan of ordinary skill in light of the teachings of the prior art. The Examiner indicates that an enlarged treadmill width of 45 inches would be desired to accommodate extremely large persons or animals and is considered a design choice which carries no patentable weight. As to the method claims, the Examiner indicates that such a sized treadmill could be used for any function, such as accommodating plural animals.

Appellants' Response

Appellants respectfully submit that the present invention is not obvious over Moon et al in view of Derksen, and request that this rejection be reversed in view of the following remarks.

Claims 1, 5, 13, and 17 Overall

(1) Appellants submit that one of ordinary skill in the art would not have combined Moon et al and Derksen.

Specifically, Moon et al is directed to a treadmill having a control panel positioned in such a manner as to minimize the likelihood of a user's foot striking a forward part of the treadmill's stationary base when the user is accessing the control panel (see, e.g., col. 1, lines 20-35). Thus, the Moon et al treadmill is directed to a user who would be on the treadmill and accessing the control panel.

In contrast, Derksen discloses a treadmill used by a horse.

Since a horse is not a treadmill user that would be accessing a control panel, one of ordinary skill in the art would not have applied the teachings of Derksen to Moon et al.

That is, one of ordinary skill in the art would not have made the belt of the Moon et al treadmill wide enough to accommodate a horse, because the Moon et al treadmill, with its specifically positioned control panel, is not intended to be used by a horse.

Rather, the Moon et al treadmill is intended to be used by a person, since a person is a user who would access a control panel. That is, the desired animal using Moon for exercise purposes is a person, and thus one would not modify Moon to suit a horse.

In this regard, as can be seen from the use of treadmills with standard sized belts by extremely large people in fitness clubs, an extremely large person can use a treadmill

with a standard sized belt. Since an extremely large person can use a treadmill with a standard sized belt in a fitness club, one of ordinary skill in the art would not have been motivated to enlarge the belt in Moon et al, particularly since such would have added to the cost of the Moon et al treadmill.

Thus, one of ordinary skill in the art would not have modified Moon in view of Derksen, and claims 1 and 13 and the claims dependent thereon are not obvious over Moon et al in view of Derksen accordingly.

(2) With respect to the Examiner's indication that this is a matter of design choice and is a matter of size or degree, Appellants submit that their wider treadmill is not merely a matter of design choice or a matter of degree, but rather is a significant change which produces a new form of exercise equipment. In this regard, Appellants submit that their wider treadmill enables a completely new form of treadmill exercising, namely, exercising by two adult treadmill users side-by-side on the same treadmill, which is neither taught nor suggested by either Moon or Derksen. Since the present invention provides a completely new form of exercising, Appellants submit that it is a change in kind, not merely degree. Indeed, Appellants submit a treadmill which results in a completely new form of treadmill exercising represents a new form of exercise equipment and thus is a change in kind for this additional reason.

The invention product permits two adult treadmill users to exercise side-by-side while holding hands, which has not been possible previously, either in Moon or elsewhere. Thus, the invention is directed to an entirely different market than that targeted by Moon, namely, companion exercisers rather than a solo exerciser. This is a change in kind, not a change in degree, and is not a matter of mere design choice.

Separate Patentability of Method Claims 13 and 17

In regard to method claims 13 and 17, Appellants submit that these claims are also not obvious because the cited references neither teach nor suggest that more than one user can be using the treadmill at one time, and thus neither teach nor suggest the claimed method for exercising two adult treadmill users positioned side-by-side on the belt of a treadmill. Accordingly, even if the belt in Moon et al were wide enough to accommodate plural animals (which Appellants submit would not have been the case, as discussed above), there is still no teaching or suggestion in the cited art which would lead one to have actually exercised plural animals on such a belt.

That is, with respect to the Examiner's indication that a modified version of Moon could be used for any desired function, such as accommodating plural animals, Appellants submit that the function of accommodating plural animals was not recognized at all in either Moon or Derksen (the Moon treadmill is intended to be used by one person at a time, and the Derksen treadmill is intended to be used by one horse at a time), let alone be recognized as a desired function, so one would not have been led to the presently claimed method from Moon in view of Derksen.

With respect to Moon in particular, Appellants submit that Moon does not contemplate accommodating plural animals, and there is no reason why one of ordinary skill in the art would look to Moon to accommodate plural animals. Moon simply represents a standard sized treadmill, which one of ordinary skill in the art would consider suitable for use by a single user. Two small adults would not use the Moon treadmill side-by-side because there is no teaching or suggestion to do such, and further

that treadmill is too narrow and thus there would be a danger of falling and suffering injury.

Thus, Appellants submit that claims 13 and 17 are not obvious over Moon et al in view of Derksen for the above additional reasoning.

Therefore, Appellants submit that the present invention is not obvious over Moon in view of Derksen, and reversal of this rejection is respectfully requested.

Rejection of Claims 1, 5, 13, and 17 under 35 U.S.C. 103(a) as being unpatentable over Kelsey et al

On page 5 of the Office Action of May 7, 2010, claims 1, 5, 13, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelsey et al.

The Examiner's Position

The Examiner's position is that Kelsey discloses a treadmill as depicted in Figure 2 having an adult male supported thereon, and the Examiner indicates that the Kelsey treadmill width in Figure 2 appears to be approximately 40-45 inches, based on the relative dimensions of the user and the treadmill. In this regard, the Examiner considers Figure 2 to be an accurate representation of the proportionality of the treadmill with respect to the user, and that it is proper to approximate the width of the treadmill given the proportional dimensions provided in Figure 2. Further, the Examiner indicates that providing a belt width of at least 45 inches is a matter of design choice and is a matter of size or degree. Also, the Examiner indicates that in view of KSR, it would have been obvious to try or experiment with various belt widths to accommodate different sized users, such as morbidly obese people who require larger accommodations.

Appellants' Response

In response, Appellants note that as set forth above, MPEP 2125 states that when a reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) (The disclosure gave no indication that the drawings were drawn to scale. "[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.").

Appellants submit that Kelsey does not disclose that the drawings are to scale and is silent as to dimensions. Thus, Appellants submit that the Examiner's arguments based on measurement of the drawing features are of little value.

Appellants note that Kelsey is directed to a single person using a treadmill, and there is no reason why one would make the belt wide enough to be used by two treadmill users as in the present invention.

With respect to the Examiner's indication that this is a matter of design choice and is a matter of size or degree, Appellants submit that their wider treadmill is not merely a matter of design choice or a matter of degree, but rather is a significant change which produces a new form of exercise equipment. In this regard, Appellants submit that their wider treadmill enables a completely new form of treadmill exercising, namely, exercising by two adult treadmill users side-by-side on the same treadmill, which is neither taught nor suggested by Kelsey. Since the present invention provides a completely new form of exercising, Appellants submit that it is a change in kind, not

merely degree. Indeed, Appellants submit a treadmill which results in a completely new form of treadmill exercising represents a new form of exercise equipment and thus is a change in kind for this additional reason.

The invention product permits two adult treadmill users to exercise side-by-side while holding hands, which has not been possible previously, either in Kelsey or elsewhere. Thus, the invention is directed to an entirely different market than that targeted by Kelsey, namely, companion exercisers rather than a solo exerciser. This is a change in kind, not a change in degree, and is not a matter of mere design choice.

With respect to the Examiner's citation of KSR, as can be seen from the use of treadmills with standard sized belts by extremely large people in fitness clubs, an extremely large person can use a treadmill with a standard sized belt. Since an extremely large person can use a treadmill with a standard sized belt in a fitness club, one of ordinary skill in the art would not have been motivated to enlarge the belt in Kelsey, particularly since such would have added to the cost of the Kelsey treadmill. Thus, Appellants submit that the Examiner has not provided an adequate reason for modifying Kelsey as required by KSR.

Separate Patentability of Method Claims 13 and 17

As to method claims 13 and 17 in particular, since Kelsey is directed to a single person using a treadmill Appellants submit that there is simply no teaching or suggestion in Kelsey of exercising two treadmill users side-by-side on a single treadmill, and thus the method claims are not obvious over the cited art for this additional reason.

Therefore, Appellants submit that the present invention is not obvious over Kelsey, and reversal of this rejection is respectfully requested.

Rejection of Claims 6 and 18 under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Nichols

On page 6 of the Office Action of May 7, 2010, claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Nichols.

In response, Appellants submit initially that Nichols does not make up for the deficiencies of Moon and Kelsey discussed above, so the present invention is not obvious over Moon et al or Kelsey et al in view of Nichols for at least those reasons.

Further, Appellants note that claims 6 and 18 recite that the handle bar has a middle portion which can extend back from a middle part of the front portion of the handle bar. Element 100 of Nichols cited by the Examiner is attached to a side portion (see, e.g., Fig. 1 and col. 2, lines 48-49)), not a front portion as required for the present invention. Thus, claims 6 and 18 are not obvious for this additional reason.

Moreover, element 100 is not even part of a handle bar, but rather is a harness assembly for animals (see, e.g., Fig. 2, the Summary of the Invention, and col. 2, lines 48-49), and thus does not teach or suggest a handle bar further comprising the middle portion as recited in claims 6 and 18.

In addition, since element 100 is a harness assembly for animals (which Nichols distinguishes from people as can be seen from the Background of the Invention section of Nichols), there is no reason why one would apply it to Moon or Kelsey, which involve exercise equipment for a person.

Separate Patentability of Method Claim 18

In regard to method claim 18, Appellants submit that this claim is also not obvious because the cited references neither teach nor suggest that more than one user can be using the treadmill at one time, and thus neither teach nor suggest the claimed method for exercising two adult treadmill users positioned side-by-side on the belt of a treadmill.

Thus, Appellants submit that the present invention is not obvious over Moon et al or Kelsey et al in view of Nichols, and reversal of this rejection is respectfully requested.

Rejection of Claims 6 and 18 under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard (Page 6 of Final Office Action)

On page 6 of the Office Action of May 7, 2010, claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard.

In response, Appellants submit initially that Gerard does not make up for the deficiencies of Moon and Kelsey discussed above, so the present invention is not obvious over Moon et al or Kelsey et al in view of Gerard for at least those reasons.

Moreover, Appellants note that element 42 of Gerard cited by the Examiner is a ski pole grip (see col. 4, line 5), and thus one of ordinary skill in the art would not have fairly applied it to a treadmill as in Moon and Kelsey.

Separate Patentability of Method Claim 18

In regard to method claim 18, Appellants submit that this claim is also not obvious because the cited references neither teach nor suggest that more than one user can be using the treadmill at one time, and thus neither teach nor suggest the claimed

method for exercising two adult treadmill users positioned side-by-side on the belt of a treadmill.

Thus, Appellants submit that the present invention is not obvious over Moon et al or Kelsey et al in view of Gerard, and reversal of this rejection is respectfully requested.

Rejection of Claims 12 and 24 under 35 U.S.C. 103(a) as being unpatentable over Piaget et al in view of Gerard

On page 7 of the Office Action of May 7, 2010, claims 12 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Piaget et al in view of Gerard.

In response, Appellants submit initially that Gerard does not make up for the deficiencies of Piaget discussed above, so the present invention is not obvious over Piaget et al in view of Gerard for at least those reasons.

Moreover, Appellants note that element 42 of Gerard cited by the Examiner is a ski pole grip (see col. 4, line 5), and thus one of ordinary skill in the art would not have fairly applied it to a treadmill as in Piaget.

Separate Patentability of Method Claim 24

In regard to method claim 24, Appellants submit that this claim is also not obvious because the cited references neither teach nor suggest that more than one user can be using the treadmill at one time, and thus neither teach nor suggest the claimed method for exercising two adult treadmill users positioned side-by-side on the belt of a treadmill.

Thus, Appellants submit that the present invention is not obvious over Piaget et al in view of Gerard, and reversal of this rejection is respectfully requested.

Rejection of Claims 25 and 26 under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen and further in view of Gerard or Nichols

On page 7 of the Office Action of May 7, 2010, claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen as applied to claims 5 and 17, and further in view of Gerard or Nichols.

In response, Appellants submit initially that Gerard and Nichols do not make up for the deficiencies of Moon in view of Derksen discussed above, so the present invention is not obvious over Moon et al in view of Derksen and further in view of Gerard or Nichols for at least those reasons.

Moreover, Appellants note that element 42 of Gerard cited by the Examiner is a ski pole grip (see col. 4, line 5), and thus one of ordinary skill in the art would not have fairly applied it to a treadmill as in Moon and Derksen.

Further, Appellants note that claims 25 and 26 recite that the handle bar has a middle portion which can extend back from a middle part of the front portion of the handle bar. Element 100 of Nichols cited by the Examiner is attached to a side portion (see, e.g., Fig. 1 and col. 2, lines 48-49)), not a front portion as required for the present invention. Thus, claims 25 and 26 are not obvious for this additional reason.

Moreover, element 100 is not even part of a handle bar, but rather is a harness assembly for animals (see, e.g., Fig. 2, the Summary of the Invention, and col. 2, lines 48-49), and thus does not teach or suggest a handle bar further comprising the middle portion as recited in claims 25 and 26. In this regard, Appellants note that the middle portion can be grasped by the right hand of the left user and/or by the left hand of the right user of the claimed treadmill, and such is simply not contemplated by the cited art.

In addition, since element 100 is a harness assembly for animals (which Nichols distinguishes from people as can be seen from the Background of the Invention section of Nichols), there is no reason why one would apply it to the primary reference Moon, which involves exercise equipment for a person.

Separate Patentability of Method Claim 26

In regard to method claim 26, Appellants submit that this claim is also not obvious because the cited references neither teach nor suggest that more than one user can be using the treadmill at one time, and thus neither teach nor suggest the claimed method for exercising two adult treadmill users positioned side-by-side on the belt of a treadmill.

Thus, Appellants submit that the present invention is not obvious over Moon et al in view of Derksen and further in view of Gerard or Nichols, and reversal of this rejection is respectfully requested.

Rejection of Claims 6 and 18 under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard (Page 7 of Final Office Action)

On page 7 of the Office Action of May 7, 2010, claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard.

In response, Appellants note that this rejection appears to be basically the same as the rejection of claims 6 and 18 under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard set forth on page 6 of the Office Action and discussed above.

Thus, Appellants submit that the above remarks responsive to the rejection of claims 6 and 18 under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard set forth on page 6 of the Office Action apply to this rejection as well.

That is, Appellants submit initially that Gerard does not make up for the deficiencies of Moon and Kelsey discussed above, so the present invention is not obvious over Moon et al or Kelsey et al in view of Gerard for at least those reasons.

Moreover, Appellants note that element 42 of Gerard cited by the Examiner is a ski pole grip (see col. 4, line 5), and thus one of ordinary skill in the art would not have fairly applied it to a treadmill as in Moon and Kelsey.

Separate Patentability of Method Claim 18

In regard to method claim 18, Appellants submit that this claim is also not obvious because the cited references neither teach nor suggest that more than one user can be using the treadmill at one time, and thus neither teach nor suggest the claimed method for exercising two adult treadmill users positioned side-by-side on the belt of a treadmill.

Thus, Appellants submit that the present invention is not obvious over Moon et al or Kelsey et al in view of Gerard, and reversal of this rejection is respectfully requested.

Rejection of Claims 25 and 26 under 35 U.S.C. 103(a) as being unpatentable over Kelsey further in view of Gerard or Nichols

On page 8 of the Office Action of May 7, 2010, claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelsey as applied to claims 5 and 17, and further in view of Gerard or Nichols.

In response, Appellants submit initially that Gerard and Nichols do not make up for the deficiencies of Kelsey discussed above, so the present invention is not obvious over Kelsey further in view of Gerard or Nichols for at least those reasons.

Moreover, Appellants note that element 42 of Gerard cited by the Examiner is a ski pole grip (see col. 4, line 5), and thus one of ordinary skill in the art would not have fairly applied it to a treadmill as in Kelsey.

Further, Appellants note that claims 25 and 26 recite that the handle bar has a middle portion which can extend back from a middle part of the front portion of the handle bar. Element 100 of Nichols cited by the Examiner is attached to a side portion (see, e.g., Fig. 1 and col. 2, lines 48-49)), not a front portion as required for the present invention. Thus, claims 25 and 26 are not obvious for this additional reason.

Moreover, element 100 is not even part of a handle bar, but rather is a harness assembly for animals (see, e.g., Fig. 2, the Summary of the Invention, and col. 2, lines 48-49), and thus does not teach or suggest a handle bar further comprising the middle portion as recited in claims 25 and 26. In this regard, Appellants note that the middle portion can be grasped by the right hand of the left user and/or by the left hand of the right user of the claimed treadmill, and such is simply not contemplated by the cited art.

In addition, since element 100 is a harness assembly for animals (which Nichols distinguishes from people as can be seen from the Background of the Invention section of Nichols), there is no reason why one would apply it to Kelsey, which involves exercise equipment for a person.

Separate Patentability of Method Claim 26

In regard to method claim 26, Appellants submit that this claim is also not obvious because the cited references neither teach nor suggest that more than one user can be using the treadmill at one time, and thus neither teach nor suggest the claimed method for exercising two adult treadmill users positioned side-by-side on the belt of a treadmill.

Thus, Appellants submit that the present invention is not obvious over Kelsey further in view of Gerard or Nichols, and reversal of this rejection is respectfully requested.

Conclusion

In view of the above remarks, Appellants submit that the present invention is patentable, and reversal of the rejections is respectfully requested.

Respectfully submitted,



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Date: January 19, 2011

CLAIMS APPENDIX

The claims involved in the appeal are as follows:

1. A treadmill comprising a base, a pair of parallel, spaced rollers rotatably disposed in the base, and an endless belt extending around both rollers, wherein the belt has a width which is large enough to accommodate two treadmill users side-by-side, wherein the two treadmill users are two adult people, wherein the treadmill further comprises a control panel for a treadmill user on the treadmill.

5. A treadmill as claimed in claim 1, wherein the belt has a width of at least 45 inches.

6. A treadmill as claimed in claim 1, wherein the treadmill has a handle bar comprising a front portion and left and right side portions, wherein the handle bar further comprises a middle portion which can extend back from a middle part of the front portion.

7. A treadmill comprising a base, two pairs of parallel, spaced rollers rotatably disposed in the base, and two endless belts, wherein one belt extends around both rollers in one pair of rollers and the other belt extends around both rollers in the other pair of rollers, wherein each belt has a width which is large enough to accommodate one treadmill user, and wherein the two belts are positioned to accommodate two treadmill users side-by-side, wherein each belt has a width which is large enough to accommodate an adult person.

10. A treadmill as claimed in claim 7, wherein the belts move independently of each other.

11. A treadmill as claimed in claim 10, wherein the belts can be inclined independently of each other.

12. A treadmill as claimed in claim 7, wherein the treadmill has a handle bar comprising a front portion and left and right side portions, wherein the handle bar further comprises a middle portion which can extend back from a middle part of the front portion.

13. A method for two treadmill users to exercise side-by-side on a single treadmill, comprising

providing a treadmill comprising a base, a pair of parallel, spaced rollers rotatably disposed in the base, and an endless belt extending around both rollers, wherein the belt has a width which is large enough to accommodate two treadmill users side-by-side, wherein the two treadmill users are two adult people, and

moving the belt to exercise two treadmill users positioned side-by-side on the belt.

17. A method as claimed in claim 13, wherein the belt has a width of at least 45 inches.

18. A method as claimed in claim 13, wherein the treadmill has a handle bar comprising a front portion and left and right side portions, wherein the handle bar further comprises a middle portion which can extend back from a middle part of the front portion.

19. A method for two treadmill users to exercise side-by-side on a single treadmill, comprising

providing a treadmill comprising a base, two pairs of parallel, spaced rollers rotatably disposed in the base, and two endless belts, wherein one belt extends around both rollers in one pair of rollers and the other belt extends around both rollers in the other pair of rollers, wherein each belt has a width which is large enough to accommodate one treadmill user, and wherein the two belts are positioned to accommodate two treadmill users side-by-side, wherein each belt has a width which is large enough to accommodate an adult person, and

moving the belts to exercise two treadmill users positioned side-by-side on the belts.

22. A method as claimed in claim 19, wherein the belts move independently of each other.

23. A method as claimed in claim 22, wherein the belts can be inclined independently of each other.

24. A method as claimed in claim 19, wherein the treadmill has a handle bar comprising a front portion and left and right side portions, wherein the handle bar further comprises a middle portion which can extend back from a middle part of the front portion.

25. A treadmill as claimed in claim 5, wherein the treadmill has a handle bar comprising a front portion and left and right side portions, wherein the handle bar further comprises a middle portion which can extend back from a middle part of the front portion.

26. A method as claimed in claim 17, wherein the treadmill has a handle bar comprising a front portion and left and right side portions, wherein the handle bar further

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comprises a middle portion which can extend back from a middle part of the front portion.

EVIDENCE APPENDIX

In the event that U.S. Patents 5,607,376 and 4,204,673 (relied upon by Appellants to show the knowledge in the art as to how an extra pair of rollers is supported on a frame) are considered to be evidence, copies of those patents are attached to this Appeal Brief. Those patents were entered into the record by the Examiner in the Office Action of January 10, 2006 (see the PTO-892 form attached to that Office Action).

RELATED PROCEEDINGS APPENDIX

None.